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THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL
ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE
CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 13 November 1995
Item 8 of the provisional agenda

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Note by the UNCTAD secretariat

At the request of the Government of Turkey, the attached text of the Act on the Protection of Competition No. 4054 of 7 December 1994 and of the Law on the Protection of Consumers No. 4077 of 8 March 1995 is made available to the Conference.

GE.95-53446

REPUBLIC of TURKIYE
MINISTRY of TRADE and INDUSTRY

ACT

ON

THE PROTECTION OF COMPETITION

No:4054, Dated 7.12.1994

DECEMBER-1994
ANKARA

PART ONE
Purpose, Scope, Definitions

Purpose

Article 1- The purpose of this Act is, within the markets for goods and services, to establish a system ensuring the necessary regulation, supervision and the prevention of abuse of dominant position by undertakings and the agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition.

Scope

Article 2- This Act applies to operations as regards measures, decisions, regulation and supervision for the protection of competition concerning the agreements, decisions and concerted practices which have as their object or effect the prevention, distortion or restriction of competition amongst any undertakings which either operate in or may affect the markets for goods and services within the territory of Turkey and the abuse of dominant power in the market and all kinds of operations and conduct which are deemed to create a merger or acquisition by which competition in the market would significantly be impeded.

Definitions

Article 3- For the purposes of this Act:

"Ministry" shall mean the Ministry of Trade and Industry" :

"Competition" shall mean the competition where the decisions are taken independently between the undertakings in the markets for goods and services:

"Dominant position" shall mean any position enjoyed in a certain market by one or more undertakings by virtue of which, one undertaking or undertakings have the power to act independently without taking into account their competitor, purchasers or suppliers, in determining economic parameters such as the amount of production or distribution, price and supply.

"Undertaking" shall mean any natural or legal person who produces, markets and sells goods and services and who forms an economic whole capable of acting independently in the market.

"Association of undertakings" shall mean any association which is formed by undertakings to carry out certain objectives whether with or without a legal personality.

"Goods" shall mean any kind of movable or immovable property which may be subject of trade.

"Services" shall mean any kind of activity in which an intellectual or physical or both intellectual and physical activity is involved and carried out in return of a price or an interest.

"Authority" shall mean the Competition Authority.

"Board" shall mean the Competition Board.

PART TWO

CHAPTER ONE
Prohibited Practices

Agreements, Decisions and Concerted Practices in Restraint Of Competition

Article 4- The agreements and concerted practices of the undertakings and association of undertakings and decisions of the associations of undertakings which cause or may have as their object or effect, directly or indirectly, the prevention, distortion or restriction of competition in a market for goods and services are unlawful and prohibited.

Such practices are, in particular, those which:

a) Fix purchase or selling prices or the factors such as cost or profit which form the price or all other trading conditions concerning purchase and sales:

b) Share of markets for goods and services or share and control of sources and elements of the markets:

c) Control of quantities of supply or demand in the markets for goods and services or determination of these figures outside the market conditions:

d) Eliminate or prevent the new competitors in the market or impede their activities:

e) Except exlusive dealing agreements, apply dissimilar conditions to equivalent transactions with other trading parties:

f) Where it appears contrary to the nature of the agreement or to the commercial customary rules to make the conclusion of contracts subject to acceptance by the resellers of maintenance of resale conditions or display or purchase of some addition a goods or services or to conclude contracts by which the purchasers are obliged to purchase some additional goods or services.

In the lack of sufficient proof for the existence of an agreement, when there arises a similarity between the markets concerned, regarding the price changes or the balance of supply and demand or the areas of activities of the undertakings, and the markets where competition is prevented, shall be deemed to have performed a concerted practice.

Each such party thereto, may be freed from liability if the contrary is proven on the grounds of economic and rational reasons.

Exemption

Article 5- The Board, upon the application of the parties concerned, may declare the provisions of Article 4 inapplicable to any decision by associations of undertakings or any agreement or to any concerted practice between undertakings which:

a) Contributes to improving the production or distribution of goods and providing services or promoting technical or economic progress.

b) Allows consumers a fair share of the resulting benefit and which does not:

c) Eliminate competition in a substantial part of the relevant market:

d) Induce a restraint on competition that is more than essential for the attainment of the objectives set out in paragraphs (a) and (b):

A decision for an exemption shall be issued for a specified period of not more than five years. Conditions and obligations may be attached to a decision as such. Upon the termination of the specified time, the decision for exemption may, upon the application of the parties concerned, be renewed if the requirements for exemption continue to be satisfied.

If the requirements of the first sub-paragrapn are satisfied. the Board may issue notifications by which a block exemption and conditions attached to it. shall be granted to certain categories of agreements.

The Abuse Of Dominant Position

Article 6- Any abuse. by one or more undertakings acting alone or by means of an agreement or concerted practices of a dominant position in a market for goods and services within the whole territory of the State or in a substantial part of it. is unlawful and prohibited.

Such abuse may. in particular. consist of:

a) Practices whose aim is to prevent. directly or indirectly. the new competitors in the market or to impede the activities of already existing competitors in the market:

b) Applying dissimilar conditions to equivalent transactions with other trading parties thereby creating a direct or indirect discrimination amongst them:

c) Making the conclusion of contracts subject to the acceptance by other parties of maintenance of resale conditions such as minimum resale price or display or purchase of some additional goods and services:

d) Practices whose aim is to distort competition in a market by means of taking financial. technological and commercial advantages of dominant position in another market for goods and services:

e) Restriction of production. marketing or technical development which would cause a disadvantageous position for the consumers.

Mergers And Acquisitions

Article 7- Merger of two or more undertakings. or acquisition. except acquisition by inheritance. by an undertaking or by a person. of another undertaking. either by acquisition of all or a part of its assets or securities or other means by which that person or undertaking acquires a controlling power in that undertaking concerned. which would create or strengthen the dominant position of one or more undertakings as a result of which competition would be significantly impeded in a market for goods and services in the whole territory of State or in a substantial part of it. is unlawful and prohibited.

The Board. shall publish the categories of mergers and acquisitions which. to be considered as legally valid. require a prior notification to the Board.

CHAPTER TWO
Powers Of The Board

Negative Clearance

Article 8- Upon application by an undertaking or association of undertakings concerned. the Board. on the basis of the facts in its possession. may certify by a 'negative clearance' certificate that the agreement. decision or practice or merger or the acquisition concerned is not contrary to the Articles 4. 6 and 7 of this Act.

The Board. after issuing a certificate as such. may revoke its decision at any time. in compliance with the requirements set out in Article 13. However. in such a case no criminal proceedings shall lie against the parties concerned. for the period until the revocation decision of the Board.

Termination Of Infringements

Article 9- Where the Board, either upon the application of the Ministry or upon a notification or complaint or upon its own initiative finds that there is an infringement of Article 4, 6 and 7 of this Act, it may, by a decision, notify the undertaking or association of undertakings concerned, of the conduct to perform or avoid for the constitution of effective competition and restitution in accordance with the rules set out in Part Four of this Act

Any natural or legal person who claims a legitimate interest is entitled to make an application.

The Board may, before taking a decision under paragraph 1 of this Article, address to the undertakings and associations of undertakings concerned, its opinions in written on how they shall terminate the infringement.

When it appears to the Board that there may arise serious and irreparable damages until the final decision, it may take interim measures conditional upon that these measures shall not exceed the scope of the final decision and in nature shall be protective of the circumstances before the infringement had occurred.

Notification of Agreements, Mergers And Acquisitions To The Board

Article 10- Any agreement, decision or concerted practice which lies within the scope of Article 4 of this Act shall be notified to the Board within a month after their conclusion. No exemption provision shall be applied to the agreements which are not notified. An exemption granted to an agreement for which notification has not been made within the specified time, shall be in effect from the date of its notification.

After making a preliminary examination within 15 days following the notification of the agreement as regards a merger or an acquisition within the scope of Article 7, the Board shall notify the parties concerned, of its consent to the transaction for the merger or acquisition therein or if the Board finds it necessary to initiate a final investigation, of the fact that the merger or acquisition concerned shall not be put into effect until the date of the final decision and of the other necessary measures together with its decision on its preliminary objection. In such cases Articles 40-59 shall be applicable to those transactions.

Where the Board, having received an application concerning a merger or an acquisition, has not taken a decision or replied to the application within the specified time period, the agreements as regards mergers or acquisitions shall be valid after 30 days following their notification.

Failure to Notify Mergers Or Acquisitions To The Board

Article 11- In cases where a merger or an acquisition has not been notified to it, the Board, when it is informed about the transaction concerned, by any means, shall, upon its own initiative, investigate the merger or acquisition. Upon conclusion of the investigation:

a) If the Board finds that the merger or acquisition concerned does not fall within the scope of Article 7 paragraph 1, it shall give consent to the merger or acquisition. However, the Board shall impose fines against the parties concerned for their failure to notify.

b) If the Board finds that the merger or acquisition concerned falls within the scope of Article 7 paragraph 1, the Board, as well as imposing fines, shall decide on the termination of the transaction concerning the merger or acquisition and the restoration of all factual situations which occurred unlawfully and the return of all shares and assets, if possible; to the ex-owners, the conditions and the time periods of which shall be

specified by the Board and if it is not possible, on their transfer to the third parties and until the return to the ex-owners or to the third parties, the persons who have acquired the undertaking shall not be entitled to take part in the administration of the undertaking concerned and on all other measures which are deemed to be appropriate.

Notification

Article 12- A notification shall comprise of all the information asked for, in the "Notification Forms" prepared by the Board. Any party may submit a notification. The party who submits the notification shall also inform the other party concerned. Any additional documents concerning the notification shall be attached to it and the submission date of the notification shall be the date on which notification shall be entered in the Board's records.

Revocation Of Exemption Or Negative Clearance Decisions

Article 13- A decision concerning an exemption or a negative clearance may be revoked and certain practices of the parties may be prohibited in cases where:

a) There appears a change in any of the facts which were taken into consideration at the time of the decision;

b) The parties are in breach of any obligations or conditions attached to the decision;

c) The decision is based on incorrect or incomplete information concerning the agreement;

For cases in which sub-paragraphs (b) and (c) apply, the decision for revocation shall have a retroactive effect commencing from the date of exemption or negative clearance and in cases where sub-paragraph (a) applies, the decision for revocation shall be effective from the date of the change in the circumstances concerned.

The exemption or negative clearance decision shall be considered non-existent in cases where the above mentioned incorrect or incomplete information in sub-paragraph (c) is obtained due to the intention or fraud of the undertaking concerned.

Request For Information

Article 14- The Board, in carrying out the duties assigned to it by this Act, may request all necessary information from the competent public authorities, institutions, undertakings and associations of undertakings.

The authorized staff of those authorities, undertakings and the associations of undertakings shall supply the requested information within the time period specified by the Board.

Investigating Powers of the Board

Article 15- The Board, in carrying out the duties assigned to it by this Act, may undertake all necessary investigations in the undertakings and associations of undertakings. To this end, the Board is empowered:

a) To examine the books, documents and all other records of the undertakings or of the associations of undertakings and if it deems necessary, take copies of those documents;

b) To ask for written and oral explanations;

c) To enter any premises, land and vehicles of undertaking and associations of undertakings.

Investigations shall be carried out by the officials of the Board. The officials shall exercise their powers by production of an authorization in writing, which specifies the subject-matter and purpose of the investigation and the administrative penalty payments to be imposed in cases where the required information is incorrect.

CHAPTER THREE
Administrative Penalty Payment

Fines

Article 16- The Board may impose on natural or legal person undertakings and associations of undertakings and to their members:

a) One hundred million Turkish Liras where the undertaking or association of undertakings supply incorrect or misleading information in an application or notification of agreements which are concluded before this Act becomes effective or in an application for consent on merger or acquisition or exemption or negative clearance decisions;

b) One hundred million Turkish Liras where the undertakings or association of undertakings supply incomplete, incorrect or misleading information in response to a request made by the Board for an investigation or for information;

c) Fifty million Turkish Liras for failure to notify, within the specified time period, a merger or an acquisition or an agreement or a concerted practice or decision which falls within the scope of Article 4;

d) Sixty million Turkish Liras for the infringement of any obligations imposed pursuant to Article 5, paragraph 3 of this Act concerning the conditions attached to an exemption decision of the Board.

The undertakings and association of undertakings who have participated in the infringement of Article 11(b) of this Act and those whose infringement of the practices prohibited pursuant to Article 4 and 6 of this Act is declared by a Board decision, shall be imposed of fines, not less than two hundred million Turkish Liras, of an amount up to 10 % of the previous year's gross income of the natural or legal person undertakings or association of undertakings or of their members to be calculated by the Board.

In cases of imposing fines on the grounds of the first paragraph on the legal person undertakings or association of undertakings; fines, up to ten percent of the personal fine charged, are also imposed on the real persons who are memoers of the administrative organ of the legal persons concerned.

When imposing fines, the Board shall take into account the existence of intention, the degree of fault, the power of the undertaking or undertakings concerned within the market, the degree of probable damages.

Conditional upon not being in breach of any of the provisions of this Act, for the agreements and decisions which are notified within the specified time period no fines shall be imposed for the period until the date of the final decision of the Board.

Periodic Penalty Payments

Article 17- The Board may impose on the undertakings and the associations of undertakings, the periodic penalty payments as in the following, calculated from the date specified in the decision:

a) Fifty million Turkish Liras per day for non-compliance with the decisions concerning the termination of infringement under Article 9 and with other measures;

b) Twenty five million Turkish Liras per day for the infringement of the Board decisions and other measures envisaged in Article 11, paragraph (b)

c) Twenty five million Turkish Liras per day for the infringement of Article 13, paragraph (1).

d) Twenty million Turkish Liras per day for practices whose purpose is to prevent the investigation in the premises, carried out by the Board officials, pursuant to Article 15.

The Nature And Enforcement of Periodic Penalty Payments Imposed Pursuant To This Act

Article 18- Any penalty payments specified in this Act bear an administrative nature. Fines and periodic penalty payments are imposed to each party participating in the infringement of this Act, separately.

Upon the decision of the judicial authorities, the periodic penalty payment shall not be executed starting from the date of the decision of an interim measure on the termination of the payment if the decision on the periodic payment is subjected to an action before the judicial authorities.

Time Limitation In Fines and Periodic Penalty Payments

Article 19- The power of the Board to impose fines and periodic penalty payments is subject to the following time Limitations:

a) Three years in the case of an infringement by an undertaking or associations of undertakings of the provisions concerning investigations, supply of information, notifications and applications,

b) Five years in the case of all other infringements.

Time shall begin to run on the day of the infringement. In the cases of continuing or repeated infringements however, time shall begin to run on the day on which the infringement ceases or on the last day of the repeated infringement.

Any action taken by the Board for the purposes of investigation or examination in respect of an infringement shall interrupt the proceeding limitation period, being effective from the date on which the action is notified to any of the parties concerned.

The limitation period shall be interrupt in cases where the decision concerned is subject to an action before the judicial authorities.

PART THREE
Organization

Competition Authority

Article 20- There is hereby instituted a Competition Authority which enjoys administrative and financial independence and a public legal personality for the purposes of establishment and improvement of markets for goods and services within free and effective competition and the supervision of enforcement of this Act and also to exercise all other duties attributed to itself by the Act.

Competition Authority shall be related to the Ministry of Trade and Industry.

The Authority shall be independent in carrying out its tasks. No any organ, body or person can order or give directives to affect the final decisions of the Authority.

The central office of the Authority shall be in Ankara.

Structure Of The Competition Authority

Article 21- The Authority shall consist of:

a) A Competition Board:

b) A Directorate:

c) Service Departments.

CHAPTER ONE
Competition Board

Composition of the Board

Article 22- Competition Board shall be comprised of eleven members including the Director and the Vice-Director.

The Council of Ministers shall appoint the members of the Board amongst the two nominees nominated either from or outside the following authorities:

- Four of the members shall be nominated amongst the nominees of the Competition Board;
- Two of the members shall be nominated amongst the nominees Ministry of Trade And Industry,
- One of the members shall be nominated amongst the nominees of the Ministry of State to which the Undersecreteriat of State Planning Organization is attached:
- And finally, the Court of Appeal, Council of State, the Board of Interuniversities and the Turkish Union of Chambers and Exchanges shall nominate two candidates each, to be appointed for the remaining four membership of the Board.

At least half of the nominees who shall be nominated by the Competition Board shall be amongst the professional officials of the Competition Authority.

The Director of the Board shall be appointed by the Council of Ministers, amongst the three members nominated by the Board. The Vice-Director shall be appointed by the Board.

Provisions For Appointment

Article 23- The Director and members of the Board shall be appointed amongst those who hold a university degree in law or in economics or in engineering or in business administration or in finance obtained either in Turkey or abroad and who have got a sufficient degree of knowledge and experience and who have a work experience for at least 10 years in public or private sector concerning their professions. The Board Members shall in addition, meet the requirements of the provisions of Article 48, paragraph A, sub. Paragraph 1, 4, 5, 6, and 7 of the Law Public Officers No 657.

Duration of Appointment

Article 24- The Director, the Vice-Director and the other members of the Board shall hold office for six years . A member shall be eligible for reappointment at the end of this six-year period. Every two years, one third of the Board members shall be renewed amongst the new nominees. In such cases sufficient numbers and proportions as regards the composition of the Board and the provisions for the appointment of Board Members shall be taken into consideration. In cases, except renewal, where the Director or any of the Board members leave their post for any reason before their duration for holding the office is terminated, new members for these posts shall be elected and appointed within a month. In a case as such, the new member shall hold office up to the end of the time of the ex-member.

The Director and the members of the Board cannot be removed of their posts on any ground before their period of holding office terminates. However, the duration of office terminates by a Board decision where the Director or the members of the Board are no longer eligible for appointment or where there arises an infringement of Article 25 of this Act or where it has been declared by a court judgement that an offence regarding their post has been committed by the Director or by any of the Board Members.

Restrictions

Article 25- Unless based on a special law, the Director and the members of the Board cannot undertake any official or private jobs, deal with trading or hold shares in the companies.

Prior to their holding offices, the Director and the Board Members shall either transfer or sell except the Treasury Boards, all their securities within the scope of the Capital Market legislation, to persons other than their close relatives: up to third degree for blood and up to second degree for in law relatives. Any Board member who does not comply with this provision within thirty days, shall be deemed to have resigned.

Membership in societies and foundations whose purpose is social aid or education and membership in non-profit making cooperatives are excluded from the above-mentioned provisions.

The members and other personnel of the Board cannot publicize or use for their own or others benefit, the confidential information and the trade secrets of the undertakings and the associations of undertakings which they obtain in the course of implementation of this Act.

Oath

Article 26- The members of the Competition Board shall attend on oath before the Council of First Presidency of the Court of Appeal concerning the compliance with the provisions of this Act and the carrying out of their duties with absolute honesty and attention.

The application for oath, made to the Court of Appeal shall be taken into consideration, immediately. The Director and the members of the Board cannot commence to perform their tasks and powers unless and until they lie on oath.

Functions And Powers Of The Board

Article 27- The powers and functions of the Board are as follows:

a) On its own initiative or upon application, to investigate, examine and search about the practices and transactions prohibited by this Act and upon determination of any breach, to take necessary measures for the termination of the breach concerned and to impose administrative penalty payments upon those who are liable for such prohibited practices.

b) To assess the applications for exemptions and negative clearances of the parties concerned and grant an exemption or negative clearance where appropriate.

c) To reassess the applications of the parties concerned in cases where, as a conclusion of constant inquiries into the markets concerned, there appears a change in the circumstances of the parties or in the market regarding the exemption and negative clearance decisions;

d) To declare its consent for mergers and acquisitions;

e) To appoint the Vice-Director of the Board;

f) To issue notifications and make necessary regulations for the implementation of this Act;

g) To declare its opinion, on its own initiative or upon the application of the Ministry, on the necessary modifications to be made in competition legislation;

h) To follow the legislation, practice, policy and measures of other states concerning the agreements and decisions in restraint of competition;

i) To specify the personnel policy of the Competition Authority and to supervise its implementation; to ratify the annual budget of the Authority prepared by the Directorate and to ratify the income, expenditure final accounts and annual programme of the Authority, if necessary to decide on the transfer of the accounts in the budget;

j) To specify the candidates to be nominated by the Authority for the membership of the Board:

k) To publish an annual report on its fields of activities and developments:

l) To assess the proposals and decide and make the necessary regulations on the purchase, rental and sales of movable and immovable and other belongings of the Authority:

m) To determine on all kinds of transactions of the Authority with third persons concerning the rights, debts, and the credits:

n) To carry out all other tasks specified by this Act.

Principles for the Proceedings Of the Board

Article 28- The Board shall be presided and represented by the Director and in his absence, by any reason such as sickness, travel or to be on leave, by the Vice Director.

The Director and in his absentia the Vice-Director shall preside the meetings and inform the other members of the Board of the issues on the agenda.

The Board members shall not attend to the discussions and the voting for the issues concerning themselves and their blood or in-law relatives up to third and second degrees, respectively.

CHAPTER TWO

The Directorate

Article 29- The Directorate shall be composed of the Director, the Vice-Director and the Assistant Directors of the Board.

The Directorate is the highest rank in the Competition Authority and the Director is responsible for the administration in general and the representation of the Authority.

This responsibility comprises of the powers and functions for the purposes of supervision, assessment, regulation and disclosure of the acuvities of the Authority in general.

Powers and Functions of the Directorate

Article 30- The powers and functions of the Directorate are as follows:

a) To provide for the organization and coordination of the Competition Board and other service departments within an efficient, harmonized, well-disciplined and organized structure and to settle the disputes between the departments of the Authority concerning their powers:

b) To determine on the date, the time and the issues to be put on the agenda of the Board meetings and to preside these meetings:

c) To provide for the enforcement of the Board decisions and to supervise their implementation:

d) To bring the proposals, prepared by the service departments to a final stage and to present them to the Board:

e) To adopt the annual budget and the accounts for the expenditures and the income of the Authority, to issue annual reports and to supervise the implementation of the budget:

f) To submit its opinions on the legislation and decisions to be made, concerning the Competition Policy:

g) To regulate the relations of the Authority with the Ministry and with other institutions:

h) To represent the Authority before the official and private institutions:

i) To provide for the publication of the notifications and regulations issued by the Authority and the final decisions of the Board:

j) To specify the limits of the powers and functions of the personnel who may be entitled to sign on behalf of the Director of the Board.

Assistant Directors

Article 31- Two assistant directors may be appointed for the purposes of providing assistance to the Director in the course of carrying out his duties. The assistant directors shall, for this purpose carry out the tasks and directives specified by the Director and provide for a harmonization and cooperation amongst the service departments and amongst different levels of the Authority.

Service Departments

Article 32- The service departments of the Authority shall be comprised of main service departments organized as head of departments and the counselling departments and the assisting departments.

Supervision

Article 33- The supervision of the accounts of the Authority shall be made by the Council of Public Accounts.

CHAPTER THREE

The Status Of The Personnel

Article 34- The permanent and primary tasks required by the Authority shall be carried out by the personnel who are employed under service contracts. The Authority is entitled to employ a sufficient number of experts and specialised off-career personnel.

Except for salaries and other financial rights, the personnel of the Authority shall be subject to the provisions of the Law No: 657 on Public Officers. The Board is entitled to regulate the necessary status for composition and the posts and entitled to form and revoke the posts as such.

The posts which are of a temporary nature or which require a specialised personnel shall be determined by the Directorate. For the posts as such, proxy provisions or job contracts provision shall be applicable. Those who shall be employed in accordance with the provisions of this paragraph shall not be deprived of their monthly salaries they get from social security institutions.

Foreign experts may also be employed in accordance with the by-laws enacted by the Board upon the proposal of the Directorate.

Appointment As An "Assistant Expert"

Article 35- The following shall be required for appointment as an assistant expert:

a) To hold a university degree in law, economics, political sciences or business administration or industrial engineering or in administration engineering or any equivalent degrees obtained aboard:

b) To be successful in the examination that shall be made:

c) To be successful in the language examination which shall be made in English, French or German:

d) Not to be above thirty years of age at the date of the examination:

Other necessary requirements shall be specified in the examination regulation which is to be issued by the Board.

"Expert" on Competition

Article 36- Those who have been appointed as assistant experts according to Article 35 and who have worked for at least three years and had positive records, shall be granted the title of "Expert on Competition" conditional upon the acceptance by the Board of a thesis which shall be, or has already been, prepared concerning an issue about competition.

The experts and the assistant experts on competition shall have the status and powers of professional officials.

Payments and Other Financial Rights

Article 37- Monthly salaries of the Director and Members of the Board shall be determined by the Council of Ministers upon the proposal of Ministry of Trade and Industry the amount of which shall not be more than twice the salaries the civil officers at the highest rank. Those which are paid to the civil officers at the highest rank and exempted from the income tax shall also be exempted from the Income Tax under this Act.

Salaries and rolls of personnel of the Authority shall be determined by the Board upon a proposal of the Directorate in accordance with the principles concerning the salaries and the adjustment of salaries stated in the first paragraph of this Article.

Assessment of the Periods of In-Service and Retirement

Article 38-The Director and the members of the Board, shall be subject to the Retirement Fund Act. The working periods of those who are subject to the Act No:657 on Public Officers and have been appointed as the Director or as a member of the Board and those who have worked for the Authority, may return to public service and are appointed to an appropriate post. In such cases, their in-service period in the Authority is accounted in accordance with the provisions of the law they are subject to.

The provisions stated in the first paragraph shall also be applicable for the Director and the Members of the Board and the experts and all the other members of the staff who are academics in the universities without prejudice to the provisions for the acquisition of academic titles.

For the purposes of retirement, the Director of the Board shall be deemed to have an equivalent status to the undersecretary of the Ministry and the members of the Board shall be deemed to have an equivalent status to the Vice-Undersecretary and the Head of Departments shall be deemed to have an equivalent status to the General Directors of the Departments of the Ministry. The status of the other personnel of the Authority regarding retirement shall be regulated by a by-laws made by the Directorate and approved by the Board.

Income of The Authority

Article 39- The income of the Authority shall be kept in a special fund and be comprised of the following:

a) An appropriation reserved in the budget of the Ministry;

b) 25 % of the fines determined by the Board in accordance with Articles 16 and 17 of this Act.

c) Fees for publications and all others.

The income of the Authority shall be kept in an account of the Authority in the Central Bank or in a state bank of Turkey. The fees stated in the paragraph (b) shall be transferred to the relevant account of the Authority after the fine becomes final and at the time fine is transferred to the Treasury accounts.

PART FOUR
Procedure On Examination And Investigation Powers

Preliminary Investigation

Article 40- The Board may, upon an application or its own initiative, decide on the direct investigation or a preliminary investigation for the purposes of determination of whether or not there appears a necessity for an initial proceeding for the application brought before it.

In cases where a preliminary investigation shall be carried out, the Director of the Board shall appoint one or more experts amongst the staff as a raporteaur.

The raporteaur who is appointed to carry out the preliminary investigation notifies to the Board in writing, all the information and evidences together with his views on the matter concerned within 30 days.

Conclusion Of Preliminary Investigations

Article 41- Within 10 days following the submission of the report on the preliminary investigation, the Board shall meet to conclude its decision on whether or not it is necessary to initiate a preliminary investigation.

Notification To The Applicants

Article 42- Where the Board, having received an application or a notification, considers, on the basis of the information in its possession that there are serious and sufficient grounds, it shall inform the applicants in writing, of its decision and of the commencement of the proceedings.

Anyone who claims to have a direct or indirect interest may bring an action against the decision of the Board concerning an express or implied dismissal of the application.

Initiation of the Investigation By the Board

Article 43- The Board, upon the decision on initiating the investigation procedures, shall appoint the Board members together with a raporteaur or raporteaurs authorized, to carry out the investigation. The investigation shall be completed within six months at most. This period may be extended by the Board, for only once, to a further six months, where it is deemed necessary.

The Board, for purposes of the investigation carried out, shall inform the parties concerned within 15 days following the date of the decision by which the investigation proceeding is initiated and request from the parties to submit their first arguments relevant to their defence in writing, within 30 days. For this submission period to begin to run, the Board, together with its request for the arguments of the parties, shall also inform them of the legal grounds and the nature of the alleged infringement.

The decision of the Board on the initiation of investigation is final.

Collection Of Evidences And Notification Of Parties

Article 44- A Committee, composed of the Board members and a raporteaur which is authorized to carry out the investigation and which acts on benalf of the Board may, during the course of investigation, exercise the powers stated under Article 14 and 15 of this Act regarding the request for information and the investigation powers. The Committee may also request for the submission of the documents within the specified time which are deemed necessary and all the information from the parties and authorities concerned. The person or persons who are claimed to have infringed this Act may, at any time during the course of investigations, submit any information or evidence which might affect the final decision.

The parties concerned may, from the date of initiation of investigation to the date of application for a hearing, request to receive copies of all documents and, if possible, all evidences issued by the Competition Authority concerning the parties.

The Board cannot take any information, of which the parties are not informed or given the opportunity to present their comments, as a basis of its decision.

Notification And Respond Of The Parties

Article 45- The report concluded at the end of the investigation shall be notified to the Board members and the parties concerned.

The parties who are alleged to have committed a breach of this Act shall be requested to submit their objections to the decision within 30 days. Upon the comments of the parties concerned, the officials who are authorized to carry out the investigation shall submit their additional views within 15 days, in writing and notify the Board members and the parties concerned of this additional report. The parties concerned may respond to that notification within 30 days. In cases where the parties prove justified grounds, the time limitation may be extended, for only once to another thirty days.

The responds not made within the specified time shall not be taken into consideration.

Meeting For A Hearing

Article 46- A hearing shall be held if the parties concerned have requested in their applications or in the petitions for defence. The Board may also take a decision for a hearing on its own initiative.

A hearing shall be held minimum within 30 days and in 60 days the maximum, following the end of the investigation stage. The invitations for a hearing shall be sent to the parties concerned minimum 30 days in advance.

Procedure As Regards Hearings

Article 47- A hearing shall be held in public. The Board may, if it thinks fit, on the grounds of public morality or the protection of commercial secrets, determine that the hearing shall be held in private.

The hearing shall be presided by the Director of the Board and his absence by the Vice-Director. The meeting shall be held by the attendance of the Director or the Vice-Director and at least seven Members of the Board.

The hearing shall be concluded within five sessions at most and several meetings held on the same day shall be considered as one session.

For the purposes of an hearing, the parties shall inform the Board of the means of proof which shall be referred in the hearing minimum 7 days before the date of the hearing. Any means of proof which have not been informed within the specified time limit shall not be relied by the parties concerned.

For the purposes of the hearing, the parties may refer to all kinds of means of proof and evidence specified in Chapter 8, Part II of the Code of Civil Procedure. The parties who are alleged to have committed a breach of this Act or their representatives and those who prove that they have, directly or indirectly, a legitimate interest or their representatives may attend to the hearing.

Final Decision

Article 48- The final decision shall be made, if possible, on the same day when the hearing is concluded, if not possible, within fifteen days and shall include also the legal grounds for the final decision.

In cases where neither the parties request for an hearing nor the Board acts on its own initiative the final decision shall be made within 30

days following the conclusion of the investigation stage with respect to an examination made on the file prepared.

Where no parties appear for the hearing, notwithstanding the decision concerned, the final decision shall be made within a week following the date of hearing upon an examination of the file prepared.

Confidentiality of The Board Meetings

Article 49- The Board shall meet in private for the final decision and the decision shall be pronounced in public. No any members of the Board can abstain from voting. The members who have attended the hearing, are obliged, unless they have an excuse, to attend the meeting for the final decision.

Procedure of The Board Meetings

Article 50- The meetings shall be presided by the Director and in his absentia, by the Vice-Director. He shall determine the subjects on which a decision is to be taken , upon discussing on the issues concerned, and after receiving all the votes, the Director shall deliver his opinion.

Sufficient Number of Votes For Meetings And Decision

Article 51- For its final decision, the Board, shall sit by at least 8 of its members including the Director or the Vice-Director and the decision shall be taken by at least a majority of 6 votes.

If the sufficient numoer of votes may not be obtained in the first meeting, the chairman shall provide the attendance of all members to the next meeting. In cases where this is not possible, the decision shall be taken by a simple majority voting of the existing members. In such a case, however, the number of members who have attended to the meeting shall not be less then the number mentioned in the first paragraph of this Article. In the case of an equality of votes in the second meeting the Director's vote shall be a weighted vote.

Except for the final decisions, all the decisions and especially the decisions for interim measures and recommendations shall be taken by the attendance of one third of the members and by a simple majority vote.

Particulars To Be Stated In A Decision

Article 52- A decision shall comprise of the following :

a) Names of the Board members who have taken the decision concerned;

b) Names of persons who have carried out the investigation and examination;

c) Names, addresses, titles and the other descriptive particulars of the parties;

d) Summary of the arguments of the parties;

e) Summary of the investigation and the legal and economic issues which are discussed;

f) Opinion of the raporteaur;

g) Assessment of all the evidences and the defence;

h) The reasoning and the statutory provisions which the decision is based upon;

i) Conclusion;

j) Dissenting opinions, if there are any;

In order not to cause any misunderstanding, the obligations imposed upon and the rights granted to the parties by the decision shall be stated expressly and implicitly.

Inscription Of Decisions

Article 53- The decision shall be written by the Director or by another member of the Board appointed by the Director and signed by all the members who have attended to the meeting. Those members who have got dissenting votes may write their opinions for their dissenting votes, jointly or separately. The original copy of the decision shall be kept in the archives of the Board. Copies of the decision shall be given to the parties in return of their signature. A copy of the decision shall also be sent to the Publication Affairs of the Competition Authority to be published.
After the decision of the Board becomes final, it shall be published in the Official Gazette without disclosing the trade secrets of the parties concerned.

Commencement Of Time Limits

Article 54- The time limitations for the decisions of the Competition Board start running from the date of noufication of the reasoned decision to the parties concerned.

Judicial Action Against the Decisions of The Board

Article 55- Application for the review of the Board's decisions and the decisions regarding the interim measures, fines and periodic penalty payments shall be made to the Council of State within the specified time. The decision shall become final if no action has been taken within this specified time limitation.

Fines cannot be collected before the Board decision concerned, becomes final. The enforcement of the decisions of the Board on fines and penalty payments is subject to the Act No: 6183 on the Procedure of Collection of Public Credits.

PART FIVE
The Effects Of Restraint of Competition In Private Law

Legal Nature of the Decisions and Agreements In Breach Of The Act

Article 56- All agreements and decisions which are in breach of Article 4 of this Act, shall be nuil and void. The parties concerned are not entitled to request the performance of obligations deriving from those agreements and decisions. If any obligation deriving from a decision or an agreement as such, has already been enforced, the obligation of the party concerned, to reimburse the other party shall be subject to Articles 63 and 64 of the Code of Obligations.

Article 65 of the Code of Obligations shall not apply to the disputes deriving from this Act.

Right To Compensation

Article 57- Those, who have, by means of a decision, an agreement or a practice, prevented, distorted or limited competition or have abused their power in the market for goods and services, shall recover all kinds of damages of the persons who suffer damages by reason of such prohibited practices. If the damages concerned occur as a result of the practices of more than one person, those shall be jointly and severally liable for the damages.

Recovery of Damages

Article 58- Those who suffer from the limitations distortion or prevention of competition may, request as their loss, of the amount between what they have in fact paid and what they, in case of effective competition, would have paid. Competitors who are affected from the distortion of competition may request for all their loss from the undertaking or undertakings who have distorted competition. In calculating the loss, the probable profits of the undertakings shall be considered by taking into account of the previous balance sheets from previous years of the undertakings concerned.

In cases where the damage is a result of an agreement, or a decision or heavy negligence of the parties, the judge, upon the request of the parties, may determine on a compensation three times of the substantial damages or three times of the profit, the undertaking who caused the damages, made or might have made.

Burden Of Proof

Article 59- In cases where the persons who suffer damages submit evidences to the judicial authorities concerning the existence of an agreement or any indication that the prices of the goods concerned have been increased at the dates close to one another, or concerning the partitioning of the market or the, stabilization of the market price for a relatively long time, it shall be the defendant undertakings who shall prove that they have not exercised a concerted practice.

Existence of agreements, decisions or practices can be proved by any means of evidence.

PART SIX
Final Provisions

Offences Against The Properties, Documents And Appropriation of the Authority

Article 60- The properties, appropriation and the documents of the Authority shall bear the status of "State property". The Director and the members of the Board and all other personnel who commit a crime concerning their professions shall be liable as a public officer. Offences committed against a Board member or other personnel of the Authority shall be deemed to have committed an offence against a public officer.

Prosecutions concerning the offences in the above paragraph shall be carried out in accordance with the general provisions.

Notification

Article 61- Any notification to the parties concerned, as regards the provisions of this Act, shall be pursued in compliance with the Notifications Act No. 7201.

By-Laws

Article 62- Besides the issues which are specified in this Act, matters such as the methods of the Board in exercising its powers, administrative and executive principles, collection of the income, specification of the expenditure, methods and principles for the supervision of above mentioned tasks, the principles to be followed in the adjustment of salaries, principles for appointment of foreign personnel, all decisions concerning the purchase of movable and immovable properties by the Authority and the bidding procedures; provisions for the accounting system of the Authority

shall be regulated by the by-laws which shall be enacted by the Council of Ministers upon the proposal of the Board.

By-laws which are issued for the purposes of implementation of this Act shall be enacted within a year following the publication of the Act.

Inapplicable Provisions

Article 63- The Authority shall not be subject to the following Acts and their amendments.

Act on General Accounting no: 1050;

Act on State Bids, no: 2886;

Act on Reimbursement, no: 6245;

The income of the Authority shall be exempted from Institutions Taxes. Taxes for succession in case of ex-gratia payments and aids and the interests which occur due to any transactions shall be exempted from Banking and Insurance Transactions taxes, all kinds of taxes and equivalent measures at the acquisition of on immavable property are exempted from all the taxes and equivalent measures for the acquisition of venicles which are bought for the Authority.

Transitional Provisions

Transitional Article 1- The first appointment of the Board members shall be made in accordance with the provisions of Article 22 of this Act. However, the provisions concerning the nominees of the Board shall not be applicable in that case.

In the first appointment, on behalf of the Board, the Prime Minister and the Minister of Trade and Industry shall nominate two nominees each, for the membership of the Board.

The members of the Board to be renewed at the end of the first second and fourth years shall be determined by drawing lots at the last Board meeting of those years. The Director of the Board shall be appointed by the Council of Ministers among the nominees of the Minister of Trade and Industry .The Director and the Vice-Director shall continue to hold their offices till the end of the sixth year without attending in the drawing lots.

Transitional Article 2- The Competition Board appointed in accordance with the proeedure stated in Transitional Article 1, shall form the organizaiton of the Authority the publication of which shall accordingly be made by a notification.

Those agreements and decisions which are already in existence at the date of this notification, shall be notified to the Board within six months after the notification.

Transitional Article 3- The Board, within a year following the entry into force of this Act, may, for only once, appoint experts without taking into consideration the Requirements stated in articles 35 and 36.

However, the experts shall meet the requirements stated in Article 35, pragrapns (a) and (c), at least have five years of experience and fourty years of age.

Those who shall be appointed from public institutions, should have succeded in the examinations for appointment to the posts concerned.

Until the formation of the Competition Authority, the related personnel of the Ministry may temporarily carry out the tasks of the Authority.

Entry Into Force

Article 64- Articles 16 and 17 of this Act concerning administrative fines shall enter into force one year after, all other articles at the date of the puolication of this Act.

Implementation

Article 65- The Council of Ministers shall have the power for the impiementation of this Act.

REPUBLIC of TURKIYE
MINISTRY OF INDUSTRY AND TRADE

LAW
ON
THE PROTECTION OF CONSUMERS

No: 4077, Dated 8.3.1995

MARCH-1995

ANKARA

PART ONE
Purpose, Scope, Definitions

Purpose

Article 1- The purpose of this Act is to take the necessary informative, educative, compensatory and protective measures in accordance with the necessities of economics and with public policy, for the protection of the consumers' health, safety, and economic interests, from the circumstantial dangers and to encourage the consumers' self-protective initiatives and to regulate all other matters concerning the encouragement of voluntary organizations for the establishment of policies on these issues.

Scope

Article 2- This Act applies to any legal transaction within the purposes of Article 1, in the markets for goods and services, where a consumer stands as a party to that transaction concerned.

Definitions

Article 3- For the purposes of this Act;

a) Ministry shall mean the Ministry of Trade and Industry,

b) Minister shall mean the Minister of Trade and Industry,

c) Goods shall mean the movable property which can be made subject of trade,

d) Services shall mean any kind of activity in which an intellectual or physical or both intellectual and physical, activity is involved and carried out in return of a price or an interest,

e) Standards shall mean the Turkish standards,

f) Consumer shall mean any natural or legal person who is the final user or who renders a service with private purposes,

g) "Seller" shall mean any natural or legal person including also public authorities and institutions who supplies goods or services to the consumers,

h) "Manufacturer-producer" shall mean any natural or legal person including public authorities and institutions who produces or manufactures goods and services or raw materials or intermediate goods,

i) Consumer Organizations shall mean any association, foundation, or consumer cooperatives established for the purposes of consumer protection.

PART TWO
Protection and Information of the Consumer

Defective Goods and Services

Article 4- Any goods or services shall be considered defective, in cases where the safety of that good or service bears a physical, economic or legal deficiency, which reduces or totally removes the benefits that the consumer is entitled to expect; or which reduces the value of the good or the service as regards the purposes of its use or consumption; or where there appears a non-compliance with the predetermined quality or the quantity of the good or the service or with its standards or with the seller's promise or with the information on the packaging, labels or on the instructions for use.

In cases where the purchased good is defective, the consumer, may, within fifteen days from the delivery of the good, request from the seller, either the alteration of the good or the refund or a reduction in the price for the loss due to the defect or a free of charge reparation. The consumer is free to request amongst any of these choices and the

seller is obliged to perform the request of the consumer. The seller, the dealer, the agent, the manufacturer-producer and the importer shall be jointly and severally liable against the consumer in respect of the defective good and any damages caused thereof. Any lack of knowledge regarding the defect concerned does not free the above mentioned persons from this liability.

In cases where the defect of the good is not obvious or has been hidden from the consumer by fraud; the seller cannot be freed from liability on the grounds that the consumer has not brought any claim within the fifteen day period.

Unless the seller has promised a longer warranty period; the time limitation for any legal action on the grounds of the defective good or any damage caused by the good concerned is two years from the date of delivery of the good by the consumer, even though the defect occurs afterwards. The seller, however, cannot rely on the two year period if he has hidden the defect from the consumer by fraud.

Defective services shall also be subjected to the above mentioned provisions. In cases where it is impossible re-perform such a service or where its performance may bring out contrary consequences to the expected purposes, a reduction equal to the value of the consumer's benefit from this defective service shall be made from the money to be paid back.

The above mentioned provisions shall not be applied to sales where the consumer purchases the good or the service concerned by being aware of the fact that it is defective.

A label on which the term "defaulted" is written, shall be placed by the manufacturer-producer or the seller, on the goods which are on second hand sale or repaired or defective, in such a way that can be easily read by the consumer. This situation shall also be stated on the receipt, bill or on the sales certificate.

The above paragraph shall not be applied to those sellers who only sell defective goods or who sell defective goods continuously at one floor or a section departed for the sales of the defective goods.

Failure To Supply

Article 5-The display of any good which does not have an indication such as "not for sale" or "sample", in the showroom or on the shelves or where it could easily be seen in the shop, shall amount to the fact that the concerned is available in the stocks of that store. Sellers can neither refrain from the sales of the goods displayed nor give the impression that the good concerned, in effect not for sale, is being sold in their shop.

No any seller can refrain from the sales of services unless there exists a justified ground to do so.

Sellers may not make the conclusion of sales contracts of goods and services subject to the acceptance of other sales contracts for different goods and services or make the conclusion of contracts conditional upon the purchase of a certain quantity or a certain quality or upon the purchase within a certain time period.

Paragraph 3 of this shall not be applied in cases where the above mentioned conditions of sales of goods and services are due to commercial usage or customary rules.

Credit Sales

Article 6-In cases of credit sales, the consumer is entitled to pay the total amount indebted, before the due time. The consumer may also pay one or more installments, on the condition that the amount to be paid shall not be less then the amount of one installment. In both cases, the seller shall make a an interest reduction in accordance with the amount paid.

In cases where the seller has reserved the right to request the rest of the total amount where the consumer fails to pay one or more installments in due time, this right can be enforced only if the seller has performed all his obligations and at least 4 weeks should pass following the consumer's failure to pay and the seller should give one week notice to the consumer for the due debt. The predetermined price of the good or the service for which a written notification is made to the consumer, cannot be changed.

In cases of credit sales the seller shall inform the consumer of the following matters and provide a copy of the contract concluded, for the consumer:

a) The price of the good or the service if it were not on a credit sales,

b) The total sales price with the interest to be paid according to the due date of the payment,

c) The amount of the interest, the annual ratio, and the ratio of the compensation for delay,

d) The amount of the advance payment,

e) The payment plan.

Campaign Sales

Article7-In campaign sales organized by way of promotions through press, radio and television or by other means where goods and services concerned are promised to be delivered or rendered at a later date; the seller, the dealer, the agent, the representative, the manufacturer-producer and the importer shall be jointly and severally liable for a failure to deliver or render the good or the service concerned at the specified date or non-compliance with the price or with the quality or the quantity specified in the sales contract.

The first paragraph of this shall also be applied for any special sales which are not considered as sales campaigns, in which however goods and services are to be delivered or rendered at a later date.

For sales campaigns the seller, in addition to the information stated in 6 paragraph 3 of this Act, is also obliged to disclose the information regarding the final date of the campaign and the date and the procedure to be followed for the delivery or the performance of the goods or services concerned.

6 paragraph 1 and paragraph 2 shall also be applied to the credit sales campaigns.

Doorstep Selling

Article 8- Doorstep sales is the type of sales which is made outside a fair or an exhibition or outside the premises of the seller, but without a prior agreement, conditional upon inspection and trial, and the value of which exceeds 1.000.000 Turkish Lira.

For any such sales, the consumer shall have a period of 7 days for inspection and trial, during which he is entitled to accept or, without any reason, cancel the purchase concerned. The seller shall, within 10 days following the notice by means of a registered letter or a notary notification or by the delivery of the consumer himself, on the withdrawal of the purchase; refund the consumer of any money paid, any negotiable instruments received and any other documents which incur a liability upon the consumer regarding this sale and within 20 days following the delivery of the withdrawal, shall take back the good concerned.

The consumer is obliged to return the good concerned to the seller under the same conditions as it was delivered. If there has been a loss in the value of the good because of its being used in the meantime, the consumer shall compensate the loss. The mere possession of the good shall not be deemed as a loss.

The consumer shall reimburse the benefit provided through the good or the service concerned in cases where it is impossible to return the product or service back to the seller or where return contradicts with the purpose of return.

This paragraph shall not be applied in cases where the sales outside the premises is a commercial usage or customary rule.

6 shall also be applied for credit doorstep sales.

The 1.000.000 Turkish Lira limit stated in the first paragraph shall be exceeded at the end of October every year, due to the increase in the wholesale price index of the State Statistics Institute. The new limit shall be disclosed by the Ministry in the Official Journal every year in December.

Obligations of The Seller in Doorstep Sales

Article 9-The seller in doorstep sales, shall issue a document to be given to the consumer together with the contract, receipt or the bill, in return of a record signed by the

consumer in which he confirms that he is informed of his rights concerning this sale, his right to withdraw and the address of the seller. The document concerned shall be bold written and comprise of the following prescription regarding the obligations of the consumer and the seller;

"The consumer, without bearing a civil or criminal liability, within 7 days, shall have the right to reject the good and without any reason, withdraw the purchase.

The seller shall, within 10 days following the notice for withdrawal, refund the money paid and any negotiable instruments or any other documents which incur a liability upon the consumer regarding this sale."

In case of a dispute, the seller shall issue this above mentioned document to the courts. If he fails to do so, the seller shall be deemed not to have performed his obligation stated in the certificate concerned.

Consumer Credit

Article 10 - In cases where a consumer applies to a bank or other similar financial institutions for purchasing consumer credits, a contract shall be concluded by the consumer and the bank or the financial institution concerned and a copy of this contract shall be kept by the consumer. The conditions of the credit envisaged in the credit contract cannot be altered in effect to the disadvantage of the consumer within the duration of the contaract.

The following shall be specified in the contract:

a) Annual interest rate,

b) The payment plan in which the date of the payment, total capital, interest, founds and other expenses should all seperately be defined,

c) Total amount of the consumer credit,

d) Total amount to be paid together with the interest and other payments,

e) Guarantees required,

f) The interest rate in default of payment,

g) Legal consequences which the debtor shall face in case of default in payment,

h) Conditions of the in advance repayment of the credit before the due date.

The consumer may either pay in advance the amount he is indebted to the bank or to the financial institution or pay one or more installments before they are due. In both cases, the bank or the financial institution shall, due to the amount paid, make a reduction in the interest to be paid.

In cases where the consumer credit is obtained for the purchase of certain goods and services or for the conclusion of a certain transactions with certain sellers, the bank or the financial institution concerned shall be jointly and severally liable together with the sellers for the defects in the goods concerned.

Periodic Publications

Article 11- Consumers who subscribe to periodicals may, in cases where the product is not in conformity with the terms of the subscription contract as regards the price or quality, cancel their subscription unilaterally by a written notice to the publisher or to the person responsible. The publisher in such a case, shall without making any deductions, refund the rest of the whole subscription fee within 15 days.

The notice concerning the withdrawal of subscription shall be effective as follows:

-for daily periodicals 15 days;
-for weekly periodicals one month;
-for monthly periodicals 3 months;

following the delivery of the written notice by the seller. For longer period publications, the notice shall be effective following the first publication after the written notice.

Label

Article 12- Labels shall be attached on the packaging or on the lids of the retail goods which are subject to trade or where this is not possible, lists shall be made available on which information concerning the origin, quality and the price of the product are quoted.

The tariffs and the prices of the services shall also be disclosed in accordance

with paragraph 1 of this .

The form, content and the procedure to be followed shall be regulated by a by-laws enacted by the Ministry.

Municipal authorities shall have the authority to execute and supervise the implementation of this .

Warranty Certificate

Article 13- The importers and the manufacturer- producers are obliged to issue guarantee certificates for the industrial products they import or produce. The seller, the agent and the representatives are liable for the completion and delivery of the warranty certificate to the consumer. The guarantee period shall start from the date of delivery of the goods and be at least one year. The warranty certificate shall also comprise of the date and number of the receipt and the serial number of the good concerned.

In cases where there occurs a defect in the good concerned within the guarantee period, due to labour, parts or assembly, the seller shall, without a request of any payment under any name what so ever, such as labour or new parts, provide the reparation of the good for which a guarantee certificate is issued.

The consumer may request from the seller to exchange the good concerned with a brand new one in cases where it is not possible to benefit from the good due to continuously repeating defects or where the reparation period exceeds the maximum period required for alteration. The seller cannot reject this request. The seller, the dealer, the agent, the manufacturer-producer, and the importer shall be jointly and severally liable towards the consumer for this request.

Paragraphs 2 and 3 of this shall not be applied to the defects which occur by virtue of a use of the consumer not in compliance with the user's instructions of the good concerned.

The Ministry shall, in cooperation with the Turkish Standards Institute, specify and disclose the goods which are sold by a warranty certificate and the maximum reparation periods of these goods.

Promotion and User's Guide

Article14-Industrial goods which are manufactured in Turkey shall be sold by an introductory guide written in Turkish and those which are imported shall be sold with an approved translation of the original guide in which maintenance, use and reparation instructions shall be quoted.

The Ministry shall, in cooperation with the Turkish Standards Institute specify and disclose the goods which shall be sold by an introductory user's guide.

Service

Article15- The manufacturers and the importers shall, for the time period specified and disclosed by the Ministry, provide the service stations for maintenance and reparations of the good, keep spare parts in the reserve and employ qualified technicians.

The Ministry shall, in cooperation with the Turkish Standards Institute specify and disclose the goods for which it is compulsory to establish a service station and the procedural rules concerning their operation.

Commercial Advertising and Notices

Article 16- Commercial advertisements and notices shall be in compliance with law and public morality and also be accurate and truthful.

Commercial advertisements and notices which are misleading or unfair or which appeal sentiments of violation and crime, endanger the security and safety of life and property of consumers, endanger public health, exploit trust or lack of experience or lack of knowledge of the consumer or exploit the elderly or the children, or the handicapped are prohibited.

Board of Advertisement

Article 17-A Board of Advertisement (The Board) shall be established to determine the principles to be complied with, concerning commercial advertising and notices, to carry out investigations on commercial advertisements and notices and to fine those who infringe the provisions of 16, and to bring out proposals to the Ministry to terminate or to correct the defective advertising and notices.

The Board, while determining on the principles to be complied with concerning commercial advertisements and notices, shall, besides the circumstances of the country, also take into consideration the universally recognized principles and concepts on advertising.

The Board shall be comprised of one General Director who is appointed by the Minister for presidency and other members who shall be appointed as follows:

a) The Ministry shall appoint a member nominated amongst those who hold a university degree and has got at least 10 years of experience in law, economics, management or finance,

b) Ministry of Justice shall appoint one member who shall be nominated amongst the judges who has performed administrative tasks in the Ministry,

c) Turkish Radio and Television Authority (TRT) shall appoint a member,

d) The Higher Education Council of Turkey shall appoint a member amongst the academics who has been qualified in "advertising".

e) The Central Council of the Union of Turkish Physicians shall appoint a member,

f) The Turkish Bar Association shall appoint a member,

g) The Turkish Union of Chambers and Stock Exchanges shall appoint a member,

h) The Associations of Journalists in Ankara, in Istanbul and in Izmir shall appoint a member,

i) The Associations of Advertisers or any higher institutions, if there is any, shall appoint a member,

j) The Council of Consumers shall appoint a member nominated amongst the representatives of Consumers' Organizations,

k) The Union of Chambers of Agriculture shall appoint a member,

l) The Confederation of Craftsmen and Artists shall appoint a member,

m/The Turkish Standards Institute shall appoint a member,

n) The Directorate of Religous Affairs shall appoint a member,

o) The Union of Chambers of Engineers shall appoint a member,

p) Confederations of workers shall appoint two members.

The Board shall be comprised of 17 members.

The members of the Board shall hold office for three years. A member can be re-appointed or elected at the end of this three year period. In cases of vacancy in the membership of the Board, there shall either be an election or an appointment within a month in accordance with the provisions of paragraph 3 of this .

The Board shall meet at least once a month or any time when required, upon the call of the Director.

The Board shall meet by at least nine of its members including the Director and, pass resolutions by a simple majority of those members who have attended to the meeting.

The Board, where it deems necessary, may form special expertise commissions on permanent or temporary basis. Public officers whose employment in those commissions is approved by the Board, shall be appointed by the public offices concerned.

The salaries to be paid to the Board members and the public servant members of the specialized commissions and to the non-public officer members of the Board shall be determined by the Ministry.

The salaries and the other payments to be paid to the Board members and to the public officer and non-public officer experts in the commissions, shall be determined by the Ministry.

The Ministry shall carry out the secretarial tasks of the Board.

The composition, working procedure and principles of the Board and the secretarial tasks shall be specified by a by-laws which is to be enacted by the Ministry.

Destructive and Dangerous Goods and Services

Article 18– In cases where goods or services may comprise of a danger or a risk to the environment or to public health, a "user's instructions", in which necessary information and warnings are made for safe consumption or usage, shall be attached to the goods or disclosed in such a way where it could explicitly be seen and read.

Supervision of the Quality

Article 19- For informing the consumers on the matters concerning consumers' life and health and safety of property and environmental health, the Ministry shall, in cooperation with the Turkish Standards Institute, determine on the principles and the procedures of quality supervision of goods and services in accordance with the standards, if yet a standard as such does not exist, the quality supervision which shall form a basis for the standards and to certify such goods, services and the institutions.

The establishments which are certified or shall be certified by the Ministry of Tourism in accordance with the Law No:2634 on Tourism Incentives, shall be exempted from this implementation.

Consumer Education

Article20-For the education of the consumers, Ministry of Education shall take necessary actions to include any such topics in the programs of schools at all levels.

The Ministry shall, upon the proposal of the Consumers Council, specify the procedures and the principles on the preparation of programs on radio and television and publication of books, magazines, leaflets and brochures for the education, enlightenment and consciousness of the consumers.

PART THREE

CONSUMER INSTITUTIONS

Council of Consumers

Article21– A Council of Consumers (the Council) shall be established under the coordination of the Ministry, for the purposes of informing the authorities concerned, of the measures to be taken for the dissolution of the problems in the interests of the consumers and of the investigation of the necessary measures for the protection of consumers' interests and the necessary measures for the problems and the necessities of the consumers.

The Council shall be composed of the Minister or of the person whom he appoints for the presidency of the Council and of the representatives of the following institutions:

-Ministry of Justice, Ministry of Internal Affairs, Ministry of Finance and Customs, Ministry of Education, Ministry of Health, Ministry of Transportation, Ministry of Agriculture and Rural Affairs, Ministry of Tourism, Ministry of Environment, Undersecreteriat of State Planing Organization, Undersecreteriat of Treasury, Undersecreteriat of Foreign Trade, State Statistics Institute, Turkish Standards Institute, Centre of National Productivity, Directorate of Religous Affairs, Association of Municipalities in Turkey, Confederation of Workers Union, Association of Turkish National Cooperatives, Higher Education Council, Association of Bars in Turkey, Turkish Architects and Engineers Chambers Association, Turkish Pharmacists Association, Turkish Physicians Association, Confederation of Turkish Merchants and Artists, Union of Chambers and Stock Exchanges, Union of Agriculture Chambers, National Quality Council, the Akhism Research and Culture Foundation and the Consumers Organizations.

The numbers and the qualifications of the representatives from the above mentioned authorities and the minimum number of members for the Consumers' Organizations to join the Consumers Council and the number of representatives from the Consumers

Organizations shall be specified by the Ministry. The number of the representatives from the public offices shall however not be more than 50 % of the total number of the members of the Consumers Council. The Council meets at least once a year.

The working principles and procedures of the Consumers Council shall be regulated by a by-laws to be issued by the Ministry.

Arbitration Committee For Consumer Problems

Article22– For the purposes of solving the disputes between the consumers and the sellers, the Ministry shall, in coordination with the municipal authorities, establish at least one arbitration committee in the provinces and the counties.

The Director of the Trade and Industry in the province or a public officer appointed by the Director shall preside the Committee which, including the President, shall be composed of five members each one of which shall be appointed by the following authorities respectively; a specialized personnel from the Municipality, a member of the Bar Association of the province concerned, a member from the Chamber of Trade and Industry and the Chamber of Craftsmen and Artists and one member from the consumer organisations. The member to be appointed to the Council from the above said Chambers shall be determined by the Chamber concerned, according to the status of the seller.

In cases where there is no any branch of the Ministry in the province or in the county, the Presidency of the Arbitrations Committee shall be carried out by the mayor himself or by a staff to be appointed by the Mayor. The rest of the members shall be appointed ex officio, by the Assembly of the Municipality in cases where the Arbitration Committee cannot be composed due to the lack of sufficient number of members.

The decisions of the Arbitration Committee constitutes a means of evidence to be issued in the Consumer Courts. Consumer disputes to which a criminal sanction is attached under 25, are excluded from the jurisdiction of the Arbitration Committee. Without a decision of the Arbitration Commitee, no any application can be made to the consumer courts for disputes the value of which does not exceed 5.000.000 Turkish Lira. This monetary limit is re-determined every year, in accordance with the procedure stated in the last paragraph of 8 of this Act.

The composition of the Consumer Council and its working principles and procedures shall be regulated by a by-laws to be issued by the Ministry.

PART FOUR

PROVISIONS CONCERNING JURISDICTION AND FINES

Consumer Courts

Article23- Any disputes between the consumers and the sellers, arising from the implementation of this Act, shall be within the jurisdiction of consumer courts.

The territorial jurisdiction of the consumer courts shall be determined by the High Council of Jurists and Prosecutors.

Any litigation brought before the consumer courts by the consumers, consumer organizations or by the Ministry is excluded from all tax charges and duties. The procedure of the litigation brought before the consumer courts is subject to the provisions of the Law on the Civil Procedure, Part 7, chapter 4.

Termination of Production and Sales and Collection of Products

Article24-In cases where a series of defective goods is for sale; the Ministry or the consumer organizations may, with the request for the termination of the production and sales and collection of the goods concerned, bring an action before the courts.
In cases where the court decides on the collection of the defective goods concerned, it shall also decide on the fact whether the defective goods concerned shall be returned to the seller. However the goods shall not be returned unless and until all expenses for the collection of the goods concerned are paid in full by the party against whom the decision is made.

The indemnity claims of the third parties who have supplied the defective goods concerned for selling purposes shall also be within the jurisdiction of the court which

deals with the initial dispute concerned.

The right of the consumers to sue individually for material and moral damages caused by the defective goods is reserved.

Penalty Provisions

Article 25– Those who infringe 4 para.7, 5 para.1, 6 para.3, 7 para.3, 9 para.1, 10 para.1, 12 para.1 and 2 shall be imposed a penalty payment of 5.000.000 Turkish Lira. Those who infringe 13 para.1&2 and 14 para.1 and 15 para.1 and 27, paragraph 2 shall be imposed a penalty payment of 10.000.000 Turkish Lira.

Those who are in violation of 16 shall be imposed a penalty payment of 200.000.000 Turkish Lira. The above mentioned figures shall be exceeded to ten times of the already existing fine; if the infringement of 16 is committed by means of written, oral or visual or other media in the whole country. The Ministry shall also request from the parties concerned to terminate or/and improve the commercial advertisement or the notice concerned. If the infringement of 16 continues notwithstanding the abovementioned request of the Ministry, the Ministry may request from the Consumer Court to decide on the termination or correction of the commercial advertisement and notice concerned.

Those who infringe 18 and 19 shall be imposed a penalty payment of 100.000.000 Turkish Liras. Besides, in cases where there is a direct relation between the goods manufactured or produced not in compliance and the obligatory standards mentioned in 18 and the consumer's safety and security of life, health and property and and where it is not possible to improve the standards, for the purposes of termination of production and sales, consumer courts may, either upon the application of the Ministry or by its own initiative, decide on the closing down of the premises of the seller, capture of the goods concerned and where it deems necessary collection of the defective goods from those who have those goods in their reserve for consumption. Where this paragraph is applied; a summary of the decision on the closure of business premises, printed in block capitals, shall be adhered to somewhere in the premises where it will clearly be seen and kept during the period of closure. The Chief Public Prosecutor shall also be informed of the summary of the decision and the summary shall immediately be published in one or more newspapers published in Ankara, Istanbul and in Izmir whose circulation figures are over 100.000 each and if there is any, in a newspaper published in the place of infringement, the costs of which shall later be imposed on the wrong-doers.

The amount of the above mentioned penalty payments shall be exceeded to two times of the already existing amount, if the infringement is repeated within the same year. The fines shall be increased in the beginning of every year, in accordance with the Additional 2 of the Turkish Criminal Code.

The administrative penalty payments imposed according to this Act shall not prevent the implementation of any other penalty payments in other legislation concerning the infringement.

Jurisdiction, Objection, Time Limitation in Penalty Payments

Article 26-- The penalty payments stated in 25 of this Act shall be imposed according to the following procedure:

a) the penalty payments for the infringement of 25 para.1 and in 12 para.1 and 2 shall be imposed by the Committee of the Municipality Assembly,

b) the penalty payments for the infringement of 25 para.3 shall be imposed by the Ministry,

c) all other penalty payments shall be imposed by the territorial governor of the location concerned.

All the penalty payments specified in this Act bear an administrative nature. The parties concerned may, within 7 days following the delivery of the notice of the fines, bring an action before the administrative courts for an objection to the fines. Such an action shall not cease the enforcement of the penalty payment imposed by the administrative authorities and if not urgent, shall be carried out through the official documents and immediately resolved. The decisions of the administrative courts upon objection, are final.

Penalty payments imposed according to 25 of this Act shall be collected in accordance with the provisions of the Act on the Procedure of Collection of Public Credits.

The time limitation for imposing penalty payments specified in this Act is one year. Time shall begin to run on the date of infringement.

In cases of continuing or repeated infringements however, time shall begin to run on the day on which the infringement ceases or repeated for the last time. Any action taken before the judicial authorities, in respect of the decision concerned shall interrupt the time limitation for the collection of the fine.

The authorized bodies shall, within 7 days, inform the professional institutions of which the offender is a member, of the fines imposed.

PART FIVE
COMPLEMENTARY PROVISIONS

Supervision

Article 27-The inspectors and the controllers of the Ministry and the personnel authorized by the municipal authorities shall, for the purposes of implementation of this Act, have the authority to carry out investigation, supervision and research in the premises such as a plant, store, shop, firm, depots or a warehouse in which goods are stored or sold or services are rendered.

Within the scope of implementation of this Act, the people concerned are under the obligation to provide those authorized staff accurate information and the original or approved copies of the documents required.

Laboratory

Article 28– The Ministry may, for the purposes of implementation of this Act, establish laboratories or use the alresady existing laboratories of the Ministry. The Ministry shall, in cooperation with other relevant Ministries, determine and publish the minimum technical specifications required in official or private laboratories.

During the course of the supervision, the Ministry may get the samples tested by public or private laboratories. In cases where the test results confirm that there is a non-compliance with the standards, all expenses of the tests shall be paid by the manufacturer-producer person or institutions. Those expenses shall be collected in accordance with the procedure stated in the Law on the Collection of Public Credits.

Appropriations

Article 29– The expenses concerning the constitution, operation and other costs of the Consumers' Council, Arbitration Council for Consumer Problems and the Advertisement Board to be established in accordance with the provisions of this Act, shall be covered from an appropriation in the budget of the Ministry.

2 '0% of the capital of the limited liability companies and the joint stock corporations the capital of which is minimum one hundred million Turkish Liras, and in cases of a capital increase 2 0% the increased amount shall be reserved in an account in the Central Bank of Turkey. 5 % of this money collected, shall be used by the institutions established for the implementation of this Act and the rest 95 % of the money shall be used by the Competition Authority established under the Law No: 4054.

Miscellanaous

Article30– General provisions shall still be applied to the matters which are not covered under this Act.

Regulations and Other Enactment

Article 31– The Ministry shall, upon the opinions of the institutions of certain professionals and of consumers' organizations and other public authorities concerned, enact regulations envisaged in this Act, within a year following the publication of the Act. For the purposes of implementation of this Act, the Ministry shall take the necessary measures and carry out required enactment in accordance with the relevant legislation

Invalidated Provisions

Article 32-The provisions and the Acts stated in the following paragraph are abrogated:

Act no: 3489 on Compulsion for Non-bargaining Sales, Act no: 632 on the Promotion and Sales of Imported or Inland Manufactured Transportation Vehicles, Machines, Motors and equipment.

Provisional Article 1- The High Council of Jurists and Prosecutors shall determine the courts which are authorized to deal with the matters which are within the jurisdiction of the consumers courts until the constitution of the consumer courts.

Entry Into Force

Article 33- This Act shall enter into force 6 months after its publication.

Implementation

Article 34--The Council of Ministers shall have the power for the implementation of this Act.

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THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL
ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL
OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 13 November 1995
Agenda item 8 (b)

Declaration of Tunis

Note by the UNCTAD secretariat

The African Workshop on Competition Policy (Tunis, 17-18 October 1995), held within the preparatory process for the Third Review Conference, pursuant to section I, paragraph (f), of the agreed conclusions of the Intergovernmental Group of Experts on Restrictive Business Practices at its fourteenth session, 1/ has adopted the Declaration of Tunis annexed hereto for submission to the Third Review Conference.

1/ Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its fourteenth session, TD/B/42(1)/3-TD/B/RBP/106, annex I.

GE.95-53650 (E)

DECLARATION OF TUNIS

The African Workshop on Competition Policy was held in Tunis from 17 to 18 October 1995, within the preparatory process for the Third Review Conference

1. Having emphasized the important role of competition policy in the economic reforms being carried out in their countries, and considering the increasingly worldwide character and the liberalization of trade, the participants call on the new Secretary-General of UNCTAD to give competition policy the priority it deserves within UNCTAD and, in particular, to ensure that human and financial resources appropriate to the needs of member States in this field are made available. In this connection, the Third Review Conference and UNCTAD IX will provide an opportunity for member States to indicate the importance they attach to competition as an instrument for development.

2. The participants invite African countries to increase the level of their participation in current world studies of competition policy, through increased presence at the expert level in international forums and particularly in the Intergovernmental Group of Experts on Restrictive Business Practices.

It is strongly hoped and recommended that the countries participating in this Workshop, as well as other countries, will attend the forthcoming Third Review Conference, particularly since Africa provided the chairman of the Intergovernmental Group of Experts at its fourteenth session held in preparation for the Third Review Conference.

3. African countries are also invited to increase cooperation and the exchange of information and know-how among their administrations and institutions responsible for competition law and policy throughout the continent, through a bilateral, subregional and regional approach contributing to the adoption of rules based on common principles.

To this end, the Workshop recommends:

- that, if resources permit, a meeting be held annually at the regional level (e.g.: Mediterranean countries, sub-Saharan countries and COMESA);

- that a register of African institutions and regulations be prepared;

- that consideration be given to the establishment of mechanisms and databases relating to competition (decisions and exchange of information on restrictive business practice indices).

4. The participants recommend that the Third Review Conference take all necessary measures to establish for Africa a comprehensive project on technical cooperation and training in the field of competition policy. The aim would be to assist African countries which have not already done so in adopting a competition policy, reflected in appropriate legislation and a

competition authority, and to facilitate exchanges of experience and ensure monitoring of the training of those responsible for competition policy in the countries of Africa.

5. The international and regional financing agencies, such as UNDP and the World Bank, as well as the European Commission and the donor countries, are invited to contribute towards the establishment of such training projects for the African countries.

6. The Workshop has noted with appreciation the offer of the Tunisian Government to make the Training Centre that is being set up in the Competition Department available for the holding of seminars, workshops and training courses in the area of competition. Other African countries might volunteer to provide similar centres south of the Sahel.

7. The African Workshop also recommends that the Third Review Conference should:

(a) Confirm its support for the Set of Principles and Rules for the Control of Restrictive Business Practices, and thereby the important role played by UNCTAD in the area of competition;

(b) Decide to rename the Intergovernmental Group of Experts on Restrictive Business Practices the "Intergovernmental Group of Experts on Competition";

(c) Request the General Assembly of the United Nations to convene a fourth review conference in the year 2000.

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Item 8 of the provisional agenda

Conclusions of the meeting on Competition Policies in Latin America and the Caribbean, Caracas, 23-24 October 1995

Note by the UNCTAD secretariat

The conclusions of the Meeting on Competition Policies in Latin America and the Caribbean, which constituted itself into a preparatory regional meeting for the Third Conference for the review of the Set, are transmitted below for the information of conference delegates.

GE.95-53707 (E)

The SELA Permanent Secretariat, UNCTAD and the Venezuelan Superintendency for the Protection and Promotion of Free Competition, in partnership with the Andean Development Corporation, organized the Meeting on Competition Policies in Latin America and the Caribbean in Caracas on 23 and 24 October 1995. The purpose of the meeting was to make progress with the analysis of the situation concerning competition policies in the region with regard to standards and machinery and to prepare the position of the region for the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

At the end of the discussions the participants agreed on the following conclusions:

1. The importance of policies, legislation and institutional structures to regulate competition in the context of the processes of modernization and economic liberalization which were being introduced in Latin America and the Caribbean and of the globalization of commercial, financial and technological exchanges was reaffirmed.

2. In the light of the foregoing, the meeting considered that exchanges of experience and views among officials responsible for competition policies and representatives of regional and international bodies were a fruitful exercise which should be repeated, preferably once every year. The proposal of the delegation of Peru to convene a meeting on the harmonization of competition standards and practices in 1996 was welcomed.

3. The important work being done by international organizations such as UNCTAD and SELA in the field of competition policies was also recognized, and the necessity of ensuring that those bodies are provided with the human and financial resources needed to meet the growing demands of member States in this field was reaffirmed.

4. In particular, it was pointed out that, with regard to the linkages between competition policies and international trade, the Third Conference to Review Restrictive Business Practices, to be held under the auspices of UNCTAD in the month immediately following (November), the regional ministerial meeting for UNCTAD IX (GRULAC, Caracas, 16-18 January 1996) and UNCTAD IX, to be held in April 1996, would offer opportunities for the countries of Latin America and the Caribbean to emphasize the importance of the subject of free competition as an instrument for development.

5. The meeting reaffirmed its commitment to the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, adopted by the United Nations General Assembly in 1980, which was still the only existing international instrument on the subject.

6. Independently of the manner of treatment of the subject of freedom of competition at the international level, the meeting, in application of the Set, reaffirmed the need to consolidate competition policies and to promote the adoption of national legislation.

7. It was also recognized that competition policies were essential for the proper functioning of integration schemes, within which the formulation of standards would have to be coordinated both with national legislation and with negotiations at the level of the hemisphere or of a multilateral character. The meeting was also informed of the interest of the integration secretariats represented (SIECA and CARICOM) in supporting the framing or, where appropriate, improvement of legislation on the promotion of competition in their respective subregional schemes. The meeting emphasized the need to prepare the position of the region in advance of the proceedings of the working party on competition policies to be conducted within the framework of the negotiations for a free trade zone embracing the entire hemisphere.

8. It was recognized that the work of advocacy of competition, designed to promote the incorporation of the principles of competition in the different fields of activity of the State, and of economic agents generally, is of fundamental importance in bringing about the removal of those barriers existing within government laws and regulations and in improving the functioning of markets.

9. The participants took note of the major developments in the legislative and institutional fields regarding consumer protection which were taking place within the region in parallel with the adoption of legislation concerning freedom of competition. They therefore drew attention to the need for UNCTAD and SELA to coordinate activities designed to promote knowledge of this subject and for the latter to be included in the agenda of UNCTAD IX on the basis of a request which might be submitted by GRULAC.

10. The participants noted with interest the links between legislation and policies on competition and those relating to unfair competition and the complementary nature of the two. They therefore requested that further analysis of the subject should be undertaken in the region and that the subject should be included in the agenda of a future meeting. To that end it would be desirable for GRULAC to bring to the attention of UNCTAD IX the need to study the subject.

11. The meeting emphasized the urgent need to promote technical cooperation measures in Latin America and the Caribbean to underpin the progress made in competition policies and legislation. To that end they put forward the following suggestions, which are designed to develop a "competition culture" in the region:

11.1 A regional technical cooperation programme should be adopted to meet the needs both of countries which already have legislation and/or institutions responsible for competition and of countries which are beginning to develop legislative and institutional machinery. The meeting requested the forum of technical cooperation directors in Latin America and the Caribbean to place the subject of competition policies on the agenda of their next meeting.

11.2 Within the context of that programme education campaigns should be designed for consumers and entrepreneurs within which both could derive benefit from experience both within and outside the region.

11.3 The subject of competition policies should be included within the activities conducted by the World Bank and the IDB to support the modernization of the State - including both the legislature and the judiciary.

11.4 It is recommended that a regional directory of legislation and institutions concerned with competition be compiled. To that end the Permanent Secretariat of SELA, with the assistance of the Venezuelan superintendency for the promotion of competition (PRO-COMPETENCIA) and UNCTAD, should accept the task of centralizing the information which member States would undertake to furnish to it in accordance with a schedule which will be sent to them in due time. The meeting also recommended the establishment of a database for the storage of information on doctrines and other basic information on competition policies in Latin America and the Caribbean.

11.5 The international financial organizations and the donor countries engaged in bilateral cooperation should be invited to support a programme of this kind as well as individual projects designed to support competition policies in Latin America and the Caribbean.

11.6 A regional scheme of internships on competition policies and legislation, embracing the national institutions in the region, should be established. Under this scheme an institution in Latin America and the Caribbean would offer officials of another country internships at their headquarters for training and exchanges of ideas on a specified subject. The country of each intern, for its part, would meet the costs of travel and subsistence. The services provided under bilateral cooperation agreements could also benefit from internships of this type if a number of countries were involved. The Permanent Secretariat of SELA, in cooperation with UNCTAD, might coordinate the setting up of this scheme.

11.7 The technical cooperation projects relating to intellectual property existing within the SELA and WIPO should be linked to the activities relating to competition policy mentioned in the previous points.

11.8 Specialized teaching programmes on freedom of competition should be promoted in the universities of Latin America and the Caribbean, in particular for students of law, economics, public administration, business management and international relations. UNCTAD's Training in the Field of Foreign Trade Programme (TRAINFORTRADE) should be associated with this campaign.

12. As regards the third review conference, participants agreed on the following:

12.1 The carrying out of studies on subjects of priority interest for Latin America and the Caribbean, such as: (a) the deregulation and privatization of public services and monopolies; (b) the relationship between free competition and intellectual property; (c) distribution channels in the processes of economic liberalization; and (d) the relationship between the strategies of the services sector and competition policies.

12.2 A study should be made of the distortions of competition attributable to financing machinery and procedures, such as those of export credit agencies favouring particular enterprises participating in international calls for tenders.

12.3 Exchanges of information and consultations on restrictive business practices affecting more than one country should be strengthened.

12.4 The United Nations General Assembly should be requested to convene the fourth review conference for the year 2000.

12.5 The United Nations General Assembly should be requested to decide to change the name of the Intergovernmental Group of Experts on Restrictive Business Practices to Intergovernmental Group of Experts on Competition Policy and Legislation.

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Geneva, 13 November 1995
Item 8 of the provisional agenda

DECLARATION AND PROTOCOL DECISION OF THE INTERSTATE COUNCIL FOR ANTI-MONOPOLY POLICIES OF THE COMMONWEALTH OF INDEPENDENT STATES (CIS) AND THE COMMISSION FOR THE PROTECTION OF COMPETITION OF THE REPUBLIC OF BULGARIA

(KISHINEV, REPUBLIC OF MOLDOVA, 7 NOVEMBER 1995)

Note by the UNCTAD secretariat

During the fifth session of the Interstate Council for Anti-monopoly Policies of the Commonwealth of Independent States (CIS), held in Kishinev, Republic of Moldova, from 6 to 7 November 1995, the representatives of the anti-monopoly bodies of the CIS member countries, jointly with the Commission for the Protection of Competition of the Republic of Bulgaria, adopted the attached Declaration and Protocol Decision, which are made available for the information of the delegations to the Conference.

GE.95-53750 (E)

DECLARATION

Under provision 8 of section E of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, States with greater expertise in the operation of systems for the control of restrictive business practices should, on request, share their experience with, or otherwise provide technical assistance to, other States wishing to develop or improve such systems.

Accordingly, taking into account the fact that the CIS countries and Bulgaria have not thus far received assistance in the development of competition from UNCTAD, and also emphasizing the importance of bringing about the harmonization of the national laws of these countries, the representatives of the anti-monopoly bodies of the CIS countries (Armenia, Belarus, Georgia, Kazakstan, Kyrgyzstan, Republic of Moldova, Russian Federation and Ukraine) and Bulgaria request the Third Review Conference on restrictive business practices to consider the question of providing substantial technical assistance in the area of competition to the CIS countries and Bulgaria, and in particular, as a first step, the financing of the technical cooperation project "Development and protection of free competition in the Commonwealth of Independent States" being submitted to the UNCTAD secretariat.

For the Directorate for State Market Regulation, Ministry of Economy, Republic of Armenia:
Head of Directorate — M.V. Mikaelyan

For the Ministry for Anti-Monopoly Policy, Republic of Belarus:
Minister — I.A. Lyakh

For the Main Directorate for Anti-Monopoly Policy, Ministry of Economy, Republic of Georgia:
Deputy Head — S.S. Fetelava

For the State Committee on Price and Anti-Monopoly Policy, Republic of Kazakstan:
Chairman — P.V. Svoik

For the State Department for Anti-Monopoly Policy, Ministry of Economy, Kyrgyz Republic:
Acting Director — S.K. Nasiza

For the Department for Anti-Monopoly Policy and Market Infrastructure, Ministry of Economy, Republic of Moldova:
Director — V.N. Geletsky

For the State Committee on Anti-Monopoly Policy and Support for New Economic Structures, Russian Federation:
Chairman — L.A. Bochin

For the Anti-Monopoly Committee, Ukraine:
State Commissioner

V.D. Pyatkovsky

For the Commission for the Protection of Competition, Republic of Bulgaria:
Chairman

S. Neshev

PROTOCOL DECISION

The representatives of the anti-monopoly bodies of the CIS countries (Armenia, Belarus, Georgia, Kazakstan, Kyrgyzstan, Republic of Moldova, Russian Federation and Ukraine) and Bulgaria, having heard a report from the representative of the State Committee on Anti-Monopoly Policy of the Russian Federation concerning the forthcoming Third Review Conference on restrictive business practices (Geneva, 13-21 November 1995), decided to:

1. Take note of the information concerning the forthcoming Conference;

2. Concur with the proposed conclusions regarding substantive items on the Conference agenda;

3. Instruct the State Committee on Anti-Monopoly Policy of the Russian Federation and the State Committee on Price and Anti-Monopoly Policy of the Republic of Kazakstan to present the common position of the CIS countries and Bulgaria, including questions relating to technical assistance, at the Third Review Conference.

For the Directorate for State Market Regulation, Ministry of Economy, Republic of Armenia:
Head of Directorate — M.V. Mikaelyan

For the Ministry for Anti-Monopoly Policy, Republic of Belarus:
Minister — I.A. Lyakh

For the Main Directorate for Anti-Monopoly Policy, Ministry of Economy, Republic of Georgia:
Deputy Head — S.S. Petelava

For the State Committee on Price and Anti-Monopoly Policy, Republic of Kazakstan:
Chairman — P.V. Svoik

For the State Department for Anti-Monopoly Policy, Ministry of Economy, Kyrgyz Republic:
Acting Director — S.K. Nasiza

For the Department for Anti-Monopoly Policy and Market Infrastructure, Ministry of Economy, Republic of Moldova:
Director — V.N. Geletsky

For the State Committee on Anti-Monopoly Policy and Support for New Economic Structures, Russian Federation:
Chairman — L.A. Bochin

For the Anti-Monopoly Committee, Ukraine:
State Commissioner — V.D. Pyatkovsky

For the Commission for the Protection of Competition, Republic of Bulgaria:
Chairman — S. Neshev

Annex

to the Protocol Decision of the fifth session of the Inter-State Council for Anti-Monopoly Policies of the CIS countries (6-7 November 1995)

Proposals by the CIS countries under item 8 of the Conference agenda

Item 8 (a) - Review of 15 years of application and implementation of the Set:

Give a positive assessment of the study prepared by the UNCTAD secretariat on this matter, noting the comprehensive analysis relating to the main provisions of the Set (TD/RBP/CONF.4/5).

Inform the Conference participants of changes made in the competition legislation of the CIS countries.

Give a critical assessment of the practical application of the Set, drawing attention to the incomplete observance of some of its provisions, such as on refraining from agreements coordinating export and import prices (provision D.3 (a)); application of the agreed principles to the activities of transnational corporations (provision B.4); and implementation within UNCTAD of comprehensive activities relating to technical assistance, advisory and training programmes (provision F.6).

Note that, notwithstanding the main task of the Set to eliminate restrictive business practices in international transactions, the practical work of sessions of the Intergovernmental Group of Experts on Restrictive Business Practices has been confined to an exchange of experience in the field of national regulation.

Item 8 (b)

("Agreed conclusions"):

Support the conclusion that there is a need to enhance the effectiveness of technical assistance provided within the framework of UNCTAD. Emphasize, in this connection, the importance of the task of coordination in respect of not only donors but of recipients. Describe the technical assistance project prepared at the request of the CIS countries and note the importance of the successful implementation of this project for the development of a market economy in the former Soviet republics. Note the advantages of providing technical assistance at the regional level, inter alia, in connection with identifying common problems. Express the wish for UNCTAD to have a more active role in ensuring the financing and implementation of technical assistance programmes.

Support the idea of entrusting UNCTAD to carry out work to identify similarities in anti-monopoly legislation and strengthen collaboration in areas where convergence is difficult to achieve. Emphasize that questions of convergence in areas such as those referred to in the "agreed conclusions" as vertical constraints, abuse of a dominant position of market power, protection of intellectual property rights and enforcement of laws are of particular interest to the Russian Federation and the CIS as a whole.

Note the particular importance of annotating and widely disseminating the Model Law on competition prepared within UNCTAD. Express the view that it would be appropriate for the secretariat to make a comparative analysis of the rules of the Model Law and the present legislation of countries in transition, identifying any differences and areas for possible harmonization.

Support the proposal to hold one- or two-day informal exchanges of views in the future within the framework of Intergovernmental Group of Experts sessions. Emphasize that the topics for such meetings should be decided upon at the preceding session of the Group and should focus on quite narrowly defined aspects with a view to ensuring a "professional dialogue".

Support the proposal to consider, at the Group's regular sessions, the question of improving the implementation of the Set, as well as the questions of national, regional and international systems for the regulation of competition, and the identification of restrictive business practices in international transactions.

Draw particular attention to the conclusion that ways and means must be found to ensure the participation of all interested sides in UNCTAD activities. Note that, because of considerable financial difficulties, many CIS countries are unable to participate in UNCTAD activities in the area of competition.

("Non-agreed conclusions")

(Conclusions on which consensus was not reached at the fourteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices)

In this regard:

(a) Support the idea of holding a Fourth Review Conference in the year 2000 with a view to further development of the scheme of multilateral cooperation on competition issues which has been established within the United Nations system and has proven its value;

(b) Support the proposal to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to that of Intergovernmental Group of Experts on Competition;

(c) On the question of removing exemptions in respect of export cartels from national anti-monopoly legislation: while in general sharing the position concerning the adverse effects of export cartels on the development of international trade, note that the removal of such exemptions from national legislation will make sense only if corresponding steps are taken by all participating countries;

(e) Support the proposal to study the economic benefits, including benefits for consumers, of competition policies.

(d), (f) - (j)

Support the proposals to undertake an analysis of matters relevant to the issue of the efficiency of, and ways of further developing, the existing

multilateral system of control of restrictive business practices, and in particular to:

- Charge the UNCTAD secretariat with carrying out such a study;
- Consider thereafter the question of the appropriateness of elaborating a multilateral agreement on the trade-related aspects of competition, its legal status and content;
- Consider the "adequacy" of the existing Set for the standpoint of the effective control of restrictive business practices in international deals, including proposals for it to be revised or supplemented;
- Decide on the question of the compatibility of international competition rules and international trade rules.

* * *

In the consideration of possible future changes to the Set, propose that it be broadened to include provisions concerning the activities of the State (State monopolies, State-owned enterprises, enterprises with exclusive rights, State subsidies, regulation of natural monopolies).

Recommend that Intergovernmental Group of Experts sessions should not only consider matters of national regulation but also elaborate common approaches to avoiding restrictive business practices in international deals.

Considering the fact that the Intergovernmental Group of Experts is at present the only institutional mechanism in the area of international regulation of competition, emphasize the urgent need to increase the financial and human resources of the Group's secretariat.

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THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS
OF THE SET OF MULTILATERALLY AGREED EQUITABLE
PRINCIPLES AND RULES FOR THE CONTROL OF
RESTRICTIVE BUSINESS PRACTICES
Geneva, 13 November 1995

REPORT OF THE CREDENTIALS COMMITTEE

1. At its third plenary meeting on 14 November 1995, the Conference, in accordance with rule 5 of the rules of procedure, appointed nine members of the Credentials Committee: China, Nepal, Nigeria, Russian Federation, Spain, South Africa, Trinidad and Tobago, United States of America and Venezuela.

2. The Committee held a meeting on 20 November 1995 and elected Ambassador Trevor Spencer (Trinidad and Tobago) as Chairman.

3. Credentials, in conformity with rule 4 of the rules of procedure, had been received for the representatives participating in the Conference.

4. The Committee found the credentials of the representatives participating in the Conference to be in due and proper form, and recommends that they be accepted.

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